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From:

Sent: Wednesday, October 27, 2010 4:52:12 PM

To:

Cc:

Subject: #4741721 - Request for Review of Opinion

We have completed our review of the Counsel opinion issued in the above-referenced matter, with which you have expressed disagreement. To summarize the salient facts, the Automated Collection System ("ACS") issued a continuous wage levy that was served on the taxpayer's employer. The employer remitted levied wages that satisfied each of the several tax year liabilities listed on the levy. However, ACS failed to issue a release of the levy. The employer continued to make remittances and the Service applied such latter remittances to other tax years that were not listed on the levy and for which the taxpayer has not filed any returns. The latest of such latter remittances occurred more than three years ago. The taxpayer has not filed any claims for refund.

Although we might have analyzed the matter differently, our conclusion is the same, *to wit*, that the Service is now prohibited from returning the latter remittances to the taxpayer. Assuming that the latter remittances resulted in overpayments, the limitation on the allowance of a refund contained in section 6511(b)(2) would prohibit the Service from making a refund, because no amounts were remitted within the last three years. Accordingly, were the taxpayer to timely file a claim for refund today (e.g., a Form 1040 for a year in which no return had yet been filed), the three-year lookback period would not extend back far enough to encompass any (involuntary) payments. As we discussed, our answer might be different if the taxpayer had made an informal claim for refund. In that event, the question would be whether the informal claim was made within two years of any of the latter remittances. However, you indicated that you were not aware of any writing that could be viewed as a request for refund.

We understand that the situation you describe might involve Service actions that would not conform to its policies or procedures. For example, the continuous wage levy likely should have been released after the listed liabilities were satisfied. You also indicated that, according to transcripts, some involuntary payments might have been misapplied. Finally, you questioned whether the Service may apply levied proceeds to tax liabilities for which no notices have been issued (including a CP 504 or a Collection Due Process levy notice described in section 6330). None of these procedural irregularities, if taken at face value, would trump the section 6511(b)(2) statutory limitation. Additionally, note that IRM Part 5.11.2.5 (08-24-2010) accurately describes surplus levy proceeds as subject to offset. Accordingly, section 6330 would not be implicated. This taxpayer should have been aware of the amounts of his tax liabilities that properly were subject to the wage levy. He also presumably was aware that his wages were being levied. Although the Service should have released the levy once the listed liabilities were satisfied, the taxpayer had ample time in which to raise an objection and ask that the Service both stop levying and refund the surplus proceeds. While we do not know what prompted the taxpayer to approach the Taxpayer Advocate Service at such later time, the statute does limit the time in which a taxpayer may request a refund, and more importantly, it places limits on the amounts that the Service is authorized to refund.

Feel free to call me directly if you further want to discuss this matter.

Regards,